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MEMORANDUM

April 15, 1994

TO: Lester C. Dalrymple, Supervisor, Licensing Services
Liquor Control Board

FROM: KIM O'NEAL, AAG
Office of the Attorney General
General Legal Division, PO Box 40100

SUBJECT: Quantity Discounts

You asked about the applicability of the regulations forbidding quantity discounts. This prohibition appears in the price posting regulations for both beer and wine. The examples you pose are a 56-case pallet of wine for \$10 less than the price of 56 individual cases and various case and half case packages of beer in which the per-can price varies.

The easy answer would probably be to forbid each of these examples, requiring the per-unit price to remain constant regardless of how many units are aggregated into a case. That solution is clearly within your authority. However, I think that you're right in differentiating between variations aimed at retailers or others in the distribution chain versus variations aimed at consumers. Under that theory, the 56-case pallet is an incentive to sellers able to buy in large quantities which is not available to sellers unable to buy in such quantities. The case and half-case offers on the other hand involve consumers receiving a few more cans or units for the same price they would ordinarily pay for fewer.

In my opinion, the purpose for the prohibition against quantity discounts is similar to the purpose behind the tied house statute--maintain an even playing field for all in the market by denying advantages to the larger entities. If quantity discounts were allowed, the bigger suppliers would be able to offer deals that smaller ones could not, and bigger retailers would be better able to take advantage of such deals by buying in bulk than would smaller ones. None of this is applicable to consumers purchasing case or half-case quantities--variations in the number of units a

Resp to Costco RFP
5331

PLAINTIFF'S EXHIBIT	
CASE NO.	CV04-0360P
EXHIBIT NO.	106

EXHIBIT NO. 39 Date: 4/2/05
Deposition Of Lester C. Dalrymple
CONNIE CHURCH, Court Reporter

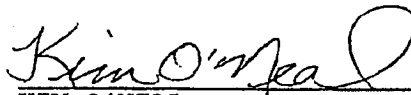
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certain amount of money will buy do not affect the distribution chain or provide advantages to any segment of it.

Under this analysis, of the examples raised in your memorandum, only the 56-case pallet falls within the prohibition against quantity discounts because it offers a lower price to a retailer who can afford to purchase in bulk. The case or half-case with a few more units simply gives the consumer more product for the same amount of money they would ordinarily pay. An offer to consumers of a case of wine with 13 or 14 bottles would presumably also be allowed.

As stated in the beginning, the easy answer is to forbid all quantity discounts, including small variations in the per-unit price to consumers. If you choose to do so, however, I believe a principled distinction can be made between the examples you cite.

If you wish to discuss this further or have additional questions, please let me know. This memorandum contains my opinion as an Assistant Attorney General and is not an official opinion of the Office of Attorney General.



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KO:lm